

IRS News Release

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Treasury, IRS Issue Section 409(p) Regulations

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WASHINGTON — The Treasury Department and IRS issued proposed and temporary regulations today under Section 409(p). That section of the tax law generally prohibits accruals or allocations under an employee stock ownership plan (ESOP) that holds stock of an S corporation where the ownership interest in the ESOP or in rights to acquire the corporation are so concentrated among 10 percent owners that they hold 50 percent or more of the interests in the corporation.

The regulations replace proposed and temporary regulations that were issued in 2003 and address a wide variety of issues under section 409(p), including the key definitions of a prohibited accrual or allocation, a disqualified person and a non-allocation year.

"These regulations support our efforts to shut down abusive schemes, in this case those skirting pension laws," IRS Commissioner Mark W. Everson said.

"These regulations respond to the comments we received from the public on the 2003 regulations, including comments recommending changes to ensure that ESOPs holding S corporation stock are not used inappropriately as tax shelter devices," said Greg Jenner, Treasury Acting Assistant Secretary for Tax Policy.

The regulations generally go into effect for plan years beginning on or after Jan. 1, 2005, subject to several special effective date rules. A public hearing on the regulations is scheduled for April 20, 2005.

The regulations – TD 9164 and REG-129709-03 – are available at the Federal Register.